UNITED STATES
v.
R. JAMES STEWARD

IBLA 81-308 Decided April 10, 1981

Appeal from a decision of Administrative Law Judge R. M. Steiner holding that placer mining operations on lands within a power withdrawal would substantially interfere with other uses of the lands. CA MC 20955 and CA MC 20956.

Affirmed.

1. Mining Claims: Powersite Lands--Mining Claims: Surface Uses--Mining Claims Rights Restoration Act

   Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or power sites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

2. Mining Claims: Powersite Lands--Mining Claims: Surface Uses--Mining Claims Rights Restoration Act

   The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

APPEARANCES: R. James Steward, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

R. James Steward appeals from a decision of Administrative Law Judge R. M. Steiner, dated January 7, 1981, holding that placer mining operations on lands within a power withdrawal would substantially interfere with other uses of the lands. Judge Steiner's decision was issued following a public hearing convened pursuant to the Act of August 11, 1955, 30 U.S.C. §§ 621-625 (1976), also known as the Mining Claims Rights Restoration Act of 1955. The claims at issue, the S-P Mine at Race Track #1 and the S-P Mine #2 at Race Track, were located by appellant and Everett W. Purkey on January 6, 1979, in sec. 9, T. 19 N., R. 8 E., Mount Diablo meridian, Yuba County, California, within the Plumas National Forest. The lands are administered by the Forest Service, U.S. Department of Agriculture.

[1] The notices of location for the two claims bear the inscription "PL-359," a reference to the Act of August 11, 1955, supra. The Act provides for location of mining claims on lands withdrawn for power development or power sites. The Act requires any person who locates a mining claim on such lands after August 11, 1955, to file a copy of the notice of location in the district land office within 60 days of location. 30 U.S.C. § 623 (1976). A person who files a placer mining claim may not conduct mining operations on the claim within 60 days after filing in the land office, in order to give the Secretary the opportunity to decide whether a hearing should be held on the question of "whether placer mining operations would substantially interfere with other uses of the land included within the placer claim." 30 U.S.C. § 621(b) (1976). If the Secretary decides to hold a hearing, mining operations on the claim must be suspended until the hearing has been held and an appropriate order issued which

> shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to these operations; or (3) a general permission to engage in placer mining.

30 U.S.C. § 621(b) (1976). See also 43 CFR Subpart 3730.

On February 1, 1980, BLM issued a decision declaring null and void those parts of the subject claims included in Power Project No. 2246 as currently licensed and as modified by a pending license amendment application. This decision held null and void ab initio those parts of the subject claims in S 1/2 N 1/2 and N 1/2 S 1/2 sec. 9, T. 19 N., R. 9 E.,

Mount Diablo meridian, lying within the boundary of Power Project No. 2246. BLM's decision was based upon section 2, Act of August 11, 1955, supra, which excepts from location

> any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once. [Emphasis supplied.]

30 U.S.C. § 621(a) (1976). As no appeal was taken by appellant from this decision, it has become final and only the remaining portions of the two claims are at issue in the present appeal.

At the hearing, the Forest Service presented evidence that mining activities on the claim sites would interfere with a proposed timber harvest in the area. A timber sale is scheduled for 1985 (Exh. 4). Furthermore, recreational activities, such as camping, fishing, and hunting, would be diminished by a permanent mining operation in the area (Tr. 27). In this regard, we note that appellant's claims are adjacent to Slate Creek near its confluence with the North Yuba River. Evidence was also offered by the Forest Service that a mining operation would remove riparian vegetation and reduce both water temperature and water quality (Tr. 27-28).

In response, Steward denied that his mining operation would substantially interfere with other uses of the land (Tr. 48). As support, he pointed to a mine one-half mile from Slate Creek whose operations cause only nominal disturbance (Tr. 49). Claimant further pointed out some uncertainties in the boundaries of the power withdrawal described by the Forest Service. 1/ Throughout the hearing, claimant sought to retain a right of ingress and egress to lands which were the subject of BLM's February 1, 1980, decision.

1/ As stated in a letter of January 3, 1980, from the Federal Energy Regulatory Commission to BLM, the lands encompassing appellant's claims are withdrawn variously in Power Site Classification No. 183, dated July 9, 1927, and pursuant to the filings of applications for Power Project Nos. 187, 2240, and 2246. The license for Power Project No. 187 was surrendered, and the application for Power Project No. 2240 was dismissed. The license for Power Project No. 2246, Yuba River Development, is in effect.

On appeal, Steward argues that his intended mining operation would not affect riparian vegetation or water quality in the area. A further argument is made that denial of permission to mine in this area will curtail development of operations advantageous to the United States.

We begin by noting that while the subject lands are withdrawn for power sites or power development, the phrase "other uses of the land included within the placer claim" in section 621(b) of the Act of August 11, 1955, supra, is not restricted to such uses. Although the Mining Claims Rights Restoration Act applies by its terms to land within power site or power development withdrawals, all uses of the land are to be considered in determining whether placer mining operations will substantially interfere with the use of the land. United States v. Cohan, 70 I.D. 178, 179 (1963). In fact, the decisions considering whether to prohibit placer claims on power site classifications have been concerned with uses other than power sites or power development. United States v. Western Minerals & Petroleum, Inc., 12 IBLA 328 (1973) (use of the land for watershed); United States v. Bennewitz, 72 I.D. 183 (1965) (use of the land for recreational purposes); United States v. Cohan, supra (use of the land for recreational and homesite purposes). On the basis of the language of section 621(b) and the Departmental decisions which interpret it, it must be concluded that the "other uses" to which that section refers are not restricted to power development or power sites. Therefore, placer mining which would substantially interfere with timber harvesting or recreational use of the withdrawn land is properly prohibited.

[2] We agree with Judge Steiner's decision that mining activities on the subject claims would substantially interfere with timber harvesting and recreational uses of the lands. In so doing, we do not necessarily reject appellant's assertions that his personal mining operation would not interfere with other uses of the land. Assuming, arguendo, that the claimant is correct in this respect, the issue before us is not whether appellant's mining operations would substantially interfere with other uses of the land, but rather whether normal placer operations carried on without restriction would so interfere. United States v. Weigel, 26 IBLA 183, 186 (1976). The Act of August 11, 1955, supra, allows the Department only three alternative courses of action. As we have already noted, those three alternatives are: (1) To bar any placer mining activity; (2) to allow such mining activity without restriction; or (3) to allow placer mining with the restriction that the land be restored to its former condition after the cessation of mining.

The reason for this "all or nothing" approach with respect to placer mining on power site or power development lands was explained in United States v. Bennewitz, supra:

> The statute permits the Secretary to act only once. He cannot issue an order now allowing unrestricted mining on the basis of a one or two dredge operation and then, if

> additional dredges are added or larger ones are substituted or a totally different type of operation is adopted, issue an order prohibiting mining. He can act only once, either to permit or prohibit. Because his course of action is so limited, to avoid defeating the purpose of the act, he should be able to base his decision not only on what the claimant proposes to do but also on what the claimant or his successor may be able to do in the way of placer mining. 72 I.D. at 183.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Steiner is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge